

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROGER DALE WHITENER	§	
v.	§	CIVIL ACTION NO. 6:15cv536
DEPUTY SCHULZ, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Roger Whitener, an inmate confined in the Larry Gist Unit in Beaumont, Texas, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The Magistrate Judge ordered Whitener to pay the filing fee of \$400.00 or to submit an application for leave to proceed *in forma pauperis* which was accompanied by a certified inmate trust account data sheet from an authorized official of the facility. Although Whitener filed an application for leave to proceed *in forma pauperis*, he did not supply a certified inmate trust account data sheet.

The Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. Because the incidents complained of occurred on or around June 13, 2013, the Magistrate Judge also recommended that the statute of limitations be suspended for a period of 90 days following the date of entry of final judgment.

Whitener received a copy of the Magistrate Judge's Report on March 18, 2016, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate

review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined that the report of the magistrate judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

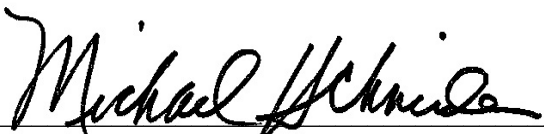
ORDERED that the report of the magistrate judge (docket no. 7) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** for failure to prosecute or to obey an order of the Court. It is further

ORDERED that the statute of limitations on the claims raised in this lawsuit is hereby **SUSPENDED** for a period of sixty days following the date of entry of final judgment in this case. The suspension of the statute of limitations will not affect any claims which were already barred by the operation of that statute at the time that this lawsuit was filed; thus, such suspension only affects claims which were not barred by limitations as of May 28, 2015, the date the original complaint was signed. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

SIGNED this 29th day of April, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE